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June 18, 1996

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

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JUN 18 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**Re: Comments of MFS Communications Company, Inc. to Bell Atlantic's
Petition for Interim Waiver in CC Docket No. 94-97, Internal File
Number CCB/CPD No. 96-11**


Dear Mr. Caton:

Transmitted herewith on behalf of MFS Communications Company, Inc., are an original and six (6) copies of its Comments in the above-referenced proceeding.

Also enclosed is an extra copy of this letter and Comments. Please date-stamp the extra copy and return it to me in the envelope provided.

If there are any questions concerning this matter, please contact me.

Very truly yours,



Pamela S. Arluk

Enclosures

cc (w/encl.): Chief, Competitive Pricing Division (2 copies by hand)
ITS (1 copy by hand)

cc (w/o encl.): Andrew D. Lipman, Esq.

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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JUN 18 1996

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)	
)	
Local Exchange Carriers' Rates, Terms)	Transmittal No.
and Conditions for Expanded)	CC Docket No. 94-97
Interconnection)	Phase I
Through Virtual Collocation for)	
Special Access and Switched Transport)	

**COMMENTS OF MFS COMMUNICATIONS COMPANY, INC.
TO BELL ATLANTIC'S PETITION FOR INTERIM WAIVER**

MFS Communications Company, Inc., ("MFS") by its undersigned counsel and pursuant to the Commission's Public Notice released June 4, 1996,¹ respectfully files its comments to Bell Atlantic's *Petition for an Interim Waiver* ("Petition"). In its *Petition*, Bell Atlantic requests a waiver of the Commission's *Prescription Order*² to meet collocators' requests for term pricing plans for virtual collocation, which Bell Atlantic claims will result in cost savings to collocator customers. To the extent that Bell Atlantic wishes to decrease its current overhead loading rates, MFS contends that a waiver is unnecessary under the Commission's *Prescription Order*. However, to the extent that Bell Atlantic wishes to increase its overhead loading rates above the Commission prescribed

¹ The internal file number for this Petition is CCB/CPD No. 96-11

² *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport*, Report and Order, 10 FCC Rcd 6375 (1995) ("*Prescription Order*")

maximum rates, Bell Atlantic must submit adequate cost justification information before raising the rates.

On May 11, 1995, the Commission released its *Prescription Order*, which concluded that Bell Atlantic's overhead loadings were unlawful, and prescribed on a permanent basis the maximum permissible overhead loadings for virtual collocation services.³ On September 18, 1995, Bell Atlantic filed a Motion to Vacate Prescription in response to the Commission's *Prescription Order*.⁴ In that Motion, Bell Atlantic claimed that because its rates for comparable access services had changed since the Commission's *Prescription Order*, the prescribed rates no longer had any direct correlation to the "comparable" access services. Bell Atlantic argued that the Commission should vacate the prescription and apply flexibly a policy that requires collocation overheads to be no higher than those in effect at the time of filing for comparable services.

MFS filed an Opposition to Bell Atlantic's Motion claiming that the Motion was an inappropriate attempt to obtain reconsideration of the Commission's *Prescription Order*.⁵ MFS argued that if Bell Atlantic wished to modify its rates, it could do so by filing proposed tariff revisions that included reasonable rates and the adequate cost information to justify those rates. In addition, MFS contended that Bell Atlantic was attempting to selectively employ term discounts, but not volume discounts, which is both unreasonable and anticompetitive. Bell Atlantic's Motion is still pending at the Commission and MFS continues to hold the view that it should be rejected for

³ *Prescription Order* at ¶ 101.

⁴ Bell Atlantic's Motion to Vacate Prescription (released September 18, 1995).

⁵ MFS Opposition to Bell Atlantic Motion to Vacate Prescription (September 28, 1995).

the above-stated reasons.

Bell Atlantic has now filed this *Petition* as a continuation of its Motion, in which Bell Atlantic claims an interim waiver of the Commission's *Prescription Order* is necessary to afford its customers cost savings. In the *Petition*, Bell Atlantic explains that in response to customer demands for pricing plan alternatives, Bell Atlantic proposes to file a new expanded interconnection offering which "will allow for significant cost savings for collocators purchasing either virtual or physical collocation" ⁶ Bell Atlantic states in its *Petition* that "the proposed offering is in the public interest in that it will provide for immediate cost savings to current collocators, will expand the current offering to allow for physical collocation, and through term plan offerings will provide a pricing alternative that will result in even greater cost savings to current and future collocators." ⁷

If Bell Atlantic's claims are accurate and it wishes to decrease its overhead loading rates, no waiver is necessary. In the *Prescription Order*, the Commission concluded that Bell Atlantic's overhead loading amounts were not just and reasonable and therefore, prescribed a *maximum level* of overhead loadings for virtual collocation services above which Bell Atlantic's rates could not exceed. The *Prescription Order*, however, contains no prohibition against Bell Atlantic charging rates *below* the prescribed maximum level. Accordingly, to the extent that Bell Atlantic intends to charge overhead loading rates that are lower than the rates it is currently charging, it is free to do so without Commission authorization.

If Bell Atlantic intends to increase its rates above the maximum prescribed level, the

⁶ *Petition* at 2.

⁷ *Id.*

arguments MFS articulated in its Opposition to Bell Atlantic's Motion to Vacate Prescription still apply. The Commission's prescribed rates cannot be modified by unilateral actions by Bell Atlantic and may not be revised without cost data adequate to support a finding that it is appropriate to change the prescribed rates. Bell Atlantic has not thus far submitted the required cost information to justify increasing its rates above the maximum level allowed in the *Prescription Order*. Until Bell Atlantic submits such specific, cost-based analysis, the Commission must refrain from allowing Bell Atlantic to raise rates above those that the Commission prescribed.

For the reasons stated above, MFS respectfully requests that the Commission deny the *Petition* to the extent that Bell Atlantic intends to increase overhead loading rates above the maximum permissible level prescribed by the Commission.

Respectfully Submitted,



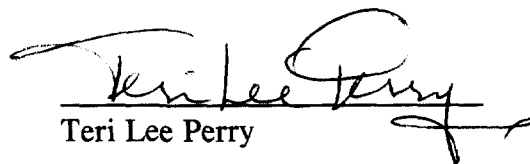
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June 18, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June 1996, copies of the foregoing
COMMENTS OF MFS COMMUNICATIONS COMPANY, INC. TO BELL ATLANTIC
PETITION FOR INTERIM WAIVER, CC Docket No. 94-97 were sent via Hand-Delivery*
or First-Class Mail, U.S. postage prepaid, to the parties on the attached service list.


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